

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

In The Matter Of:	)	
	)	
Ryan T. Burkard	)	Case Number: 15-46235-399
Rebeca Ann Burkard	)	
	)	
Debtors	)	Chapter 13
	)	
U.S. Bank Trust, N.A., as Trustee for	)	Motion to Lift Stay filed by
LSF9 Master Participation Trust	)	U.S. Bank Trust, N.A., as Trustee for LSF9
	)	Master Participation Trust
Movant,	)	
	)	
vs.	)	Millsap & Singer, LLC
	)	612 Spirit Drive
Ryan T. Burkard	)	St. Louis, MO 63005
Rebeca Ann Burkard	)	(636) 537-0110
	)	
and	)	<b>Hearing Date: August 31, 2016</b>
	)	<b>Hearing Time: 10:00 A.M.</b>
John V. LaBarge, Jr.	)	<b>Objection Deadline: August 24, 2016</b>
	)	
Trustee	)	
	)	
Respondents	)	
	)	

**NOTICE OF HEARING AND  
MOTION FOR RELIEF FROM AUTOMATIC STAY, OR  
IN THE ALTERNATIVE, TO DISMISS**

**WARNING: ANY RESPONSE OR OBJECTION MUST BE FILED WITH THE COURT BY AUGUST 24, 2016 (SEE L.B.R. 9013-1). A COPY MUST BE PROMPTLY SERVED UPON THE UNDERSIGNED. FAILURE TO FILE A TIMELY RESPONSE MAY RESULT IN THE COURT GRANTING THE RELIEF REQUESTED PRIOR TO THE HEARING DATE.**

**THE HEARING TO BE HELD ON THE DATE AND TIME ABOVE BEFORE THE HONORABLE BARRY S. SCHERMER, IN THE UNITED STATES BANKRUPTCY COURT, EASTERN DISTRICT OF MISSOURI, THOMAS F. EAGLETON U.S.**

**COURTHOUSE, 111 SOUTH TENTH STREET, FLOOR 5, NORTH COURTROOM,  
ST. LOUIS, MO 63102.**

COMES NOW, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust and for its Motion for Relief from Automatic Stay, or, in the Alternative, to Dismiss and respectfully states to the Court as follows:

1. On August 19, 2015, Debtors filed a Petition under Chapter 13 of the Bankruptcy Code. John V. LaBarge, Jr. is the duly appointed and qualified Trustee in this case.

2. U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust is the holder of a secured claim in this proceeding by virtue of one Promissory Note dated February 17, 2004 in the original principal amount of \$116,812.65. A copy of said Note has been electronically attached to this document as Exhibit A and is made a part hereof by this reference.

3. Said Note is secured by a Deed of Trust dated February 17, 2004 and recorded as Doc # 040008841 constituting a first lien on real estate owned by the Debtors. Said property being commonly known as 3429 Henry Drive, Imperial, MO 63052; more particularly described as follows:

LOT 5 OF ARCHVIEW SUBDIVISION, ACCORDING TO THE PLAT  
THEREOF RECORDED IN PLAT BOOK 48 PAGE 14 OF THE  
JEFFERSON COUNTY RECORDS.

A copy of said Deed of Trust, which is recorded in the Jefferson County Recorder of Deeds Office, has been electronically attached to this document as Exhibit B and is made a part hereof by this reference.

4. Movant seeks to enforce said Note and Deed of Trust as by law allowed. No creditor or Trustee of the estate has any interest in said realty superior to the rights of Movant.

5. This Court previously entered its Order pursuant to 11 U.S.C. Section 362(a) prohibiting, among other things, any act to enforce any lien against the property of the estate and any act to obtain possession of property of the estate.

6. The approximate pay off on said note is as follows:

Principal	\$95,061.44
Interest to July 8, 2016	\$4,229.59
MFR Attorney Fees	\$600.00
MFR Attorney Costs	\$176.00
Fees currently assessed	\$6,304.26
Deferred Amounts	\$40,390.06
Total Pay Off	\$146,761.35

7. The Chapter 13 Plan filed by the Debtors calls for treatment of the secured claim with payments being made by the Debtors. Monthly post petition payments are owing and delinquent from November 23, 2015. The following are the payments that are delinquent as of July 8, 2016:

8 payments @ \$936.53	\$7,492.24
MFR Attorney Fees	\$600.00
MFR Attorney Costs	\$176.00
MFR Arrearages Suspense	(\$16.67)
Total Arrearages	\$8,251.57

The next payment under the terms of the Note will come due on July 23, 2016 and is in the amount of \$936.53. A post-petition payment history has been electronically attached to this document as Exhibit C and is made a part hereof by this reference.

8. The aforesaid realty has depreciated in value while in possession of the Debtors. There is no equity in said property for the benefit of the Debtors. Such property is not necessary for an effective reorganization.

9. Good and sufficient cause exists in this case to modify the automatic stay of Section 362 for the reason that:

(a) Post-petition payments to U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust have not been paid by the Debtors.

(b) U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust does not have adequate protection for its interest in said real estate.

(c) If U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust is not permitted to foreclose its security interest in said real estate, it will suffer irreparable injury, loss and damage.

(d) The Chapter 13 plan with respect to U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust was not proposed in good faith as required by 11 U.S.C. Section 1325(a)(3) notwithstanding confirmation by the Court.

10. Movant specifically requests permission from this Honorable Court to communicate with Debtors and Counsel for Debtors to the extent provided for under applicable nonbankruptcy law to discuss loss mitigation options including alternatives to foreclosure.

WHEREFORE, Movant prays that this Court terminate the automatic stay in regard to the realty in order to permit Movant, or its successors and assigns to proceed with foreclosure on the aforesaid property, to pursue its remedies under state law in connection with the aforesaid Deed of Trust and Note, and to pursue its remedies under state law for possession of said property after foreclosure, to proceed with any foreclosure alternatives and for an order that the relief from the automatic stay is not stayed pursuant to Rule 4001 for fourteen (14) days. In the alternative, Movant prays that this Court dismiss this case for failure to abide by the terms and conditions of the Chapter 13 plan and for such other relief as is appropriate and just.

Dated July 19, 2016

Respectfully Submitted,  
Millsap & Singer, LLC

/s/ William T. Holmes, II

Cynthia M. Woolverton, #47698, #47698MO  
William T. Holmes, II, #59759, #59759MO  
Benjamin C. Struby, #56711, #56711MO  
612 Spirit Drive  
St. Louis, MO 63005

Telephone: (636) 537-0110  
Facsimile: (636) 537-0067  
bkty@msfirm.com

Attorneys for U.S. Bank Trust, N.A., as Trustee  
for LSF9 Master Participation Trust

### **CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing document was filed electronically on July 19, 2016, with the United States Bankruptcy Court, and has been served on the parties in interest via e-mail by the Court pursuant to CM/ECF as set out on the Notice of Electronic filing as issued by the Court or in the alternative has been served by depositing a true and correct copy of same enclosed in a postage prepaid, properly addressed envelope, in a post office official depository under the exclusive care and custody of the United States Postal Service within the state of Missouri on those parties directed by the Court on the Notice of Electronic Filing issued by the Court as required by the Federal Rules of Bankruptcy Procedure and the Local Rules of the United States Bankruptcy Court.

/s/ William T. Holmes, II

### **Electronic Mail Notice List**

The following is the list of attorneys who are currently on the list to receive e-mail notices for this case.

Sean C. Paul

John V. LaBarge, Jr.

Office of the United States Trustee

### **Manual Notice List**

The following is a list of parties who are not on the list to receive e-mail notices for this case (who therefore require manual noticing).

Ryan T. Burkard  
Rebeca Ann Burkard  
3429 Henry Dr.  
Imperial, MO 63052

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and	)	
	)	
John V. LaBarge, Jr.	)	
	)	
Trustee	)	
	)	
Respondents	)	
	)	

**SUMMARY OF EXHIBITS AND CERTIFICATE OF SERVICE**

The following exhibits in reference to the Motion for Relief have been electronically attached as Exhibits and are available upon request in their entirety.

- A. Note
- B. Deed of Trust
- C. Post Petition Payment History

Respectfully Submitted,  
Millsap & Singer, LLC

/s/ William T. Holmes, II  
Cynthia M. Woolverton, #47698, #47698MO  
William T. Holmes, II, #59759, #59759MO  
Benjamin C. Struby, #56711, #56711MO

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St. Louis, MO 63005  
Telephone: (636) 537-0110  
Facsimile: (636) 537-0067  
bkty@msfirm.com

Attorneys for U.S. Bank Trust, N.A., as Trustee  
for LSF9 Master Participation Trust

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of all documents supporting my Motion for Relief referenced above, including legible copies of all documents evidencing perfection of security interests have been served on the Trustee and Counsel for the Debtors on July 19, 2016. Copies of the above documents are available to other parties in interest upon request.

/s/ William T. Holmes, II